DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

1. ***Claims 1 – 9, 19, and 20 are rejected under 35 U.S.C. 102(a) as being anticipated by Kraus, JR. et al. (US 6,470, 220 B1).***

Regarding Claim 1, Kraus, JR. et al. (hereinafter Kraus) discloses a device for determining mechanical, particularly elastic, parameters of an examination object, comprising

a) at least one arrangement for determining the spatial distribution of magnetic particles in at least one examination area of the examination object, further comprising a means for generating a magnetic field with a spatial profile of the magnetic field strength such that there is produced in at least one examination area a first part-area having a low magnetic field strength and a second part-area having a higher magnetic field strength, a means for detecting signals *("SQUID," col. 7, ll. 60 – 67)* which depend on the magnetization in the examination object, particularly in the examination area, that is influenced by a spatial change in the particles, and a means for evaluating the signals so as to obtain information about the, in particular temporally changing, spatial distribution of the magnetic particles in the examination area *(col. 13, ll. 9 – col. 14, line 36)*; and

b) at least one means for generating mechanical displacements *("magnetocarcinotherapy (MCT)," col. 3, ll. 52 – 60)*, in particular oscillations, at least in and/or adjacent to the

examination area of the examination object *(col. 9, line 23 – col. 10, line 21; col. 13, line 15 – col. 14, line 25)*.

Regarding Claim 2, Kraus discloses a device as claimed in claim 1, characterized by at least one means, in particular at least one coil arrangement, for changing the spatial position of the two part-areas in the examination area so that the magnetization of the particles changes locally *(col. 13, ll. 9 – 14)*.

Regarding Claim 3 and 4, Kraus discloses device as claimed in claim 1, characterized in that the means for generating mechanical displacements or oscillations comprises at least one oscillating element ("implanted magnetic needle"), an oscillation generator ("magnet") and an oscillation transmission means for transmitting oscillations from the oscillation generator to the oscillating element and/or at least one sound source, in particular an ultrasound source; components are made of non-metallic and/or metallic material *(col. 9, ll. 65 – 67; col. 3, ll. 52 – 60; col. 11, line 58 – col. 12, line 5)*.

Regarding claims 5 - 9, Kraus discloses relevant characterizations *(see rejection of Claim 1; col. 9, line 23 – col. 10, line 64; col. 13, ll. 16 – 18; and col. 14, ll. 9 – 15)*.

Regarding Claim 19, Kraus discloses a use of the device as claimed in claim 1 for determining the internal pressure or the change in internal pressure of gas bubbles present in an examination object, in order to image body parts and/or organs *(col. 6, ll. 41 – 67)*.

Regarding Claim 20, Kraus discloses a use of the device as claimed in claim 1 for examining, particularly in real time, tissue or organs, in particular respiratory organs *(col. 6, ll. 46 - 48)*.

Response to Arguments

2. ***Applicant's arguments filed January 25, 2010 have been fully considered but they are not persuasive.***

Applicant argues that cited prior art Kraus Jr., et al. fails to disclose "producing in at least one examination area a first part-area having a low magnetic field strength and a second part-area having a higher magnetic field strength."

Examiner respectfully disagrees and points out that claim 1 includes language that modifies the aforementioned feature such that it is "influenced by a spatial change in the particles, and a means for evaluating the signals so as to obtain information about the, in particular temporally changing, spatial distribution of the magnetic particles in the examination area." The *passage(s) in column 13 – column 14* of Kraus, Jr. et al. suggests as much (such as "time varying distribution of the magnetic field *(col. 13, line 9)*;" and "amount of magnetic material can vary depending upon the magnetic strength per unit volume" in an examination area *(col. 14, ll. 31 – 33)*). Kraus Jr., et al. may not describe the feature in question in exactly the *same* words as in Claim 1, but the teaching are there. Furthermore, Kraus Jr., et al. discusses means for producing magnetic fields so that they are different from on are to the next ("alternating fields") *(col. 13, line 66)*. It would be inherent that they vary such that one field would have higher or lower in magnetic strength than a nearby field would have.

3. ***Applicant's remarks with respect to double patenting rejections under 35 USC § 101 have been fully considered and noted.***

Though, it is not included in this action, should the opportunity for issuing an allowance for the present invention arise, Examiner will contact Applicant in regards to filing a terminal disclaimer as necessary.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VANI GUPTA whose telephone number is (571)270-5042. The examiner can normally be reached on Monday - Friday (8:30 am - 5:30 pm; EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. G./
Examiner, Art Unit 3768

/Long V Le/
Supervisory Patent Examiner, Art Unit 3768